



**Anunda v Hepa General Agencies Ltd (Miscellaneous Application Arbitration E004 of 2025)
[2025] KEHC 13015 (KLR) (Commercial and Tax) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION ARBITRATION E004 OF 2025**

**FR OLEL, J
SEPTEMBER 23, 2025**

BETWEEN

DAVID ONSARE ANUNDA CLAIMANT

AND

HEPA GENERAL AGENCIES LTD RESPONDENT

RULING

A. Introduction

1. Before this court for determination are two chamber summons applications filed by either party herein. The first application is the Chamber Summons dated 15.01.2025, filed by the claimant, who sought that the partial consent Award and final Award on costs and interest made, signed and published by the appointed arbitrator on 10.03.2024 and 11.12.2024 respectively, be adopted as the final judgment in the dispute between the claimant and the respondent, and a decree/certificate of costs be issued.
2. While the second application filed is also a chamber summons application, dated 06.03.2025, filed by the respondent seeking to set aside the partial consent award and final award on costs made by the sole Arbitrator, who presided over the matter.
3. When this suit came up for direction on 19.06.2025, both parties confirmed that they had filed their relevant responses and submissions and urged the court to determine both applications simultaneously.



B. Pleadings

i. Chamber summons dated 15.01.2025.

4. This application was filed under Section 36 of the Arbitration Act, Cap 49 & Rule 9 of the Arbitration Rules 1997 & Section 3A of the Civil Procedure Act. The claimant averred that he entered into a sale agreement dated 17.11.2019, with the respondent, wherein he agreed to sell and transfer to the respondent as purchaser, his property known as LR. No 37/241/9 (IR No 11465/8), but unfortunately, a dispute arose over payment of the balance of the purchase price, being Kshs 15,500,000/= by the respondent. As a result, the dispute was referred to Mr. Kamau Karori SC, C.Arb, FCI Arb as the sole Arbitrator for its determination.
5. The Arbitral proceedings were subsequently held and the arbitrator rendered his partial consent Award dated 10th March, 2024, and his final award on costs and interest dated 11.12.2024, directing that;
 - a. Judgement for Kshs.15,500,000/= being the balance of the contractual sums unpaid by the respondent;
 - b. Simple interest at Central bank lending rates of 20.5% per annum for the amount of Kshs.15,500,000/= from 3rd January, 2020 until payment in full;
 - c. The respondent shall pay the claimant the sum of Kshs.456,833.00/= as costs within thirty (30) days from the date of this award. Any amount that will remain unpaid on the lapse of thirty (30) days from the date of this award will attract simple interest at the rate of 14% per annum, calculated on a reducing balance from the day the thirty (30) days lapse until payment in full;
 - d. The respondent shall reimburse the claimant the amount of Kshs.174,000.00/= that the claimant paid towards the tribunal's appointment fee within thirty (30) days from the date of this award. Any amount that will remain unpaid thirty (30) days from the date of this award will attract simple interest at the rate of 14% per annum, calculated on reducing balance from the thirty (30) days lapse until payment in full;
 - e. The respondent shall pay the tribunal's additional costs of Kshs.518,000.00/= plus VAT within thirty (30) days from the date of this award. If the claimant shall have paid any amount towards the tribunal's fees and expenses, then he shall be entitled to recover that amount from the respondent within thirty (30) days from the date of this award. If the respondent fails to pay within thirty (30) days, then the amount that will remain unpaid thirty (30) days from the date of this award will attract simple interest at the rate of 14 per annum on reducing balances for the day the thirty (30) days lapse until payment in full.
6. Further, he did contend that the parties did not agree on party-to-party costs, which matter again was placed before the sole Arbitrator and in a determination dated 11th December, 2024, he awarded the applicant herein a sum of Kshs.456,833.00/= payable within thirty (30) days, and in default the balance would also attract simple interest on the reducing balance until payment in full.
7. The award and determination on costs were never challenged by the respondent nor had the same been set aside, and therefore, urged the court to hold that it was just and proper to have the same adopted as the final judgment of this court and a decree/ certificate of costs be issued as prayed.
8. In response, the respondent filed their replying affidavit dated 17.02.2025, opposing this application on the premise that it was speculative and was premature, as the applicant had not demonstrated nor adduced any evidence to show that they were undertaking the sale and transfer of the suit property to a



third party. They further opposed the adoption of the Arbitral award because they had received a copy of the same on 28.10.2025 and were still reviewing the same with a view to taking necessary steps to protect their interest.

9. Therefore, granting the orders sought at this stage would unfairly prejudice their interest and urged the court to dismiss the said application with costs.

ii. Chamber Summons Dated 06.03.2025

10. The respondent/Applicant also filed their chamber summons Application pursuant to provisions of Section 35,(2),(a),(i)&(iii) & Section 35(3) of the *Arbitration Act*, Cap 49, Rules 4(2), rule 7 and 11 of the *Arbitration Rules* & Order 46 rule 16(1),(b) of the *Civil Procedure Rules*, and sought for orders that the court be pleased to set aside the partial consent award dated 10th May, 2024 and the Final award on costs and interest dated 11th December,2024 but released to the respondent/applicant on 28.01.2025 by the Arbitrator, Hon Kamau Karori.
11. The said application was premised on the grounds that the claimant had instituted a suit against them in the Chief Magistrate's Court at Millimani MCCCMMMSU/E187/2002 - *David Onsare Anunda vrs Hepa General Agencies Ltd*, where one of their directors, Henry Obanyi, purporting to act under their authority and in the capacity as their representative, invoked clause 13 of the sale agreement dated 17.12.2019 to refer the suit to arbitration. Subsequently, his request was allowed, and the matter was referred to the Chairman, Chartered Institute of Arbitrators, requesting him to appoint a sole arbitrator to determine the dispute.
12. It was their contention that they did not participate in the appointment of the sole Arbitrator and/or the subsequent Arbitration proceedings, and that Henry Obanyi, had acted *ultra vires* by participating in the said proceedings without their knowledge and/or approval of other directors of the applicant company. His actions were therefore *ultra vires* and directly infringed on their right to be heard as guaranteed under Article 50(1) of the *Constitution* of Kenya, 2010.
13. In the premise, and in the absence of a board resolution giving him authority to represent the company, the said director, Henry Obanyi, lacked authority to represent the applicant company and thus urged the court to set aside the partial consent award dated 10.05.2024 and final Arbitral award dated 11.12.2024 as the same had been procured unprocedurally.
14. In response, the claimant/respondent filed his replying affidavit dated 05.05.2025 and disclosed that the applicant company directors comprised members of the same family, which fact had not been disclosed by Catherine Kwamboka Nyabuto, who was Henry Obanyi's daughter. He further chronologically set out the process of how the sole arbitrator was appointed, supported by numerous exchanges of correspondence, which culminated in the applicant's advocate letter of 03.10.2022, approving the appointment of the sole arbitrator. It was therefore disingenuous of Catherine Kwamboka Nyabuto to claim that they were not given notice and/or did not participate in the appointment of the said arbitrator, when the facts revealed otherwise.
15. As to whether Henry Obanyi lacked authority to represent the respondent/applicant company, the respondent reiterated that the company directorship consisted of family shareholders, and it was inconceivable that other directors/family members were unaware of the court and arbitration proceedings, where the majority shareholder (their father) actively participated and endorsed.
16. The claimant/respondent also noted that there was no affidavit filed by the applicant's advocate and/or Henry Obanyi renouncing their willing participation and approval of the Arbitration process. The applicants were involved in a charade to buy time as the signature on the pleadings, signed by the



current advocate, when compared to that of their previous advocate, were similar. Both advocates were also housed on the same building and floor.

17. The claimant thus urged this court to dismiss this Application.

C. Analysis & Determination

18. I have carefully considered both Applications, the affidavits made in support and in opposition thereto, and the respective submissions filed by the parties. The issues that arise are;

- i. Whether the directors of the respondent/applicant approved the Appointment of the sole Arbitrator who undertook the Arbitral proceedings.
- (ii) Whether Henry Obanyi (Director) acted *ultra vires* and/or without authority to represent the respondent in the Arbitral proceedings

i. Appointment of the Arbitrator

19. The claim before the Chief Magistrate's court and the Arbitration tribunal was for the unpaid balance of Kshs 15,500,000/= due to the claimant from the respondent for the acquisition of property known as Title IR No 14063. Upon being sued for this balance, it is the respondent director (Henry Obanyi) who invoked clause 13 of the sale agreement dated 17.12.2019 to have the matter referred for arbitration as contracted therein. Subsequently, through the respondent, through their advocate, approved the appointment of the sole arbitrator by the Chartered Institute of Arbitrators, participated in the said proceeding, and signed a consent culminating in the partial consent award dated 10.05.2024.
20. It is not denied that the respondent company directors are all members of one family and that Henry Obanyi (their father and majority shareholder) fully participated in the Chief Magistrate's court proceedings, pushed for the suit to be referred to Arbitration, and also personally attended the Arbitration proceedings, where a consent was recorded partially settling the dispute.
21. It is worth noting that the debt outstanding is not denied, nor has the respondent annexed the company's board resolution, where the issue of the majority shareholder representing them was discussed and a resolution made that the majority shareholder acted in an *ultra vires* manner and/or without authority. The said averment must be taken with a pinch of salt and is clearly calculated to buy time to avoid paying the outstanding debt.
22. Secondly, as rightly pointed out by the claimant/respondent, the position in law is that, based on the doctrine of indoor management of a company (also known as the Turquand rule), it is assumed that a person dealing with a company in good faith is entitled to assume that there has been necessary compliance concerning its internal management processes. See *Standard Chartered Bank of Kenya Limited v Al-Amin & 9 others* (Civil Appeal E029 of 2021) [2023] KECA 1059 (KLR), *East African Safari Air Limited vs. Anthony Ambaka Kegode & another* [2011] eKLR & *Mahony vrs East Holyford Mining Co* (1875) LR 7L869.
23. Mr Henry Obanyi represented the company from inception, when the contract was signed, and all through until the arbitration process was concluded without any hitch, and they cannot turn around to disown his authority, and also fault the claimant for assuming he had full authority and capacity to do so.

ii. Setting Aside the Partial Consent Award.

24. Section 35 (2) of the *Arbitration Act* allows the High Court to set aside an Arbitral Award under specific conditions including instances in which it is shown that – a party involved in the arbitration agreement



was incapacitated; the arbitration agreement is invalid under the relevant law; the party applying was not properly notified of the arbitrator's appointment or the proceedings thereby preventing the party from presenting its case; the award addresses disputes not covered by the arbitration terms or includes decisions beyond its scope; the arbitral tribunal's composition or procedures did not align with the parties' agreement; the award was influenced by fraud, bribery, undue influence, or corruption; or the High Court determines that the subject matter cannot be settled by Arbitration under Kenyan law or the Award conflicts with public policy. See *Euromec International Limited v Shandong Taikai Power Engineering Company Limited* (Civil Case E527 of 2020) [2021] KEHC 93 (KLR) & *Ann Mumbi Hinga v Victoria Njoki Gathara* Nrb CA Civil Appeal No. 8 of 2009 [2009] eKLR.

25. The applicant moved the court under the provisions of Section 35(2),(a),(i) and (iii) of the *Arbitration Act*, which grounds provide that an arbitral award maybe set aside if it is proved that the applicant did not have capacity to engage in the said process and/or a party was not given proper notice to participate in the appointment of the arbitrator. The court has already determined that Mr Henry Obanyi had the proper capacity to represent the applicant company, directly participated in the arbitration process, through his advocate, approved the appointment of the sole arbitrator, and crucially consented to the partial award issued. The grounds advanced herein to set aside the arbitral award are therefore devoid of merit.

D. Conclusion and Disposition

26. The Respondents' Application dated 6th March 2025, therefore, lacks merit and the same is dismissed with costs.
27. Consequently, the claimant's application dated 15th January 2025 is allowed on terms that the Partial consent Award dated 10th May 2024, together with the Final Award of Costs and interest dated 11th December 2024, be and is hereby recognised as binding and leave be and is hereby granted to the Claimant/Applicant to enforce it as a decree of this court.
28. The Costs of both applications will be borne by the Respondent company, and the said costs are each assessed at Kshs.35,000/= all inclusive.
29. It is so ordered.

READ, SIGNED, AND DELIVERED VIRTUALLY ON THE VIRTUAL PLATFORM, TEAMS, AT MARSABIT ON THIS 23RD DAY OF SEPTEMBER, 2025.

FRANCIS RAYOLA OLEL

JUDGE

In the presence of: -

Ms Kache - Applicant

N/A - Respondent

Mr. Jarso - Court Assistant

